

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11061 of 1994
with
CIVIL APPLICATION NO. 11405 of 1997.

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL MOHANLAL KALYANJI

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
SERVED BY DS for Respondent No. 2
MR ND NANAVATI for Respondent No. 4
MR BH UPADHYAY for Respondent No. 5

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

Date of decision: 09/12/97

ORAL JUDGEMENT (Per K.Sreedharan CJ.) :

Special Civil Application No.11061 of 1994 is

stated to be a public interest litigation. Petitioner claims to be a member of the Committee of the "Neechi Mandal Sahakari Mandal" and is also the President of "Neechi Mandal Telbiya Sahakari Mandali". The relief claimed by him is to quash the order dated 4-7-1994 (Annexure C) issued under Section 48(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), releasing the land comprised in Survey No. 1142 of Mauje Madhapar Vajepar, Morbi, from acquisition.

Short facts necessary for the disposal of this petition are as follows.

At the instance of the Agricultural Produce Marketing Committee, Morbi (hereinafter referred to as the APMC), proceedings were initiated under the Land Acquisition Act for acquisition of extensive property. One block comprised of seven survey numbers admeasuring 5 Hect. 61 Are and 50 Sq.mts. Survey Nos. 1142, 1146 and 1147 having a total extent of 6 Hect. 26 Are and 25 Sq.mts. formed a second block. Notification under section 4 of the Act in respect of this Block was published on 30-7-1977. Declaration under section 6 of the Act was notified on 1-3-1978. The Land Acquisition Officer passed award on 27-3-1984 in relation to the properties comprised in that block. Pursuant to that award, it is stated before us by the learned Counsel appearing for land-owners that no amount is deposited by the APMC till date. Learned counsel appearing for the APMC is not in a position to controvert the said statement. Various suits and petitions were filed by owners of the land for getting their properties released from acquisition. One such matter reached the Supreme Court in Special Leave Petition (Civil) No.760 of 1978. That petition was disposed of by the Apex Court observing:

" We have already stated that it is not for us to interfere with the acquisition, but we are sure and we so direct that if the petitioners move the State Government to reconsider the matter it will be given a fresh look and as far as possible injury minimised."

Thereupon the owners of the properties comprised in survey no. 1142 moved the Government for releasing the land from acquisition. Consequently the Government issued order dated 4-7-1994 (Annex.C) invoking the powers under section 48(1) of the Act, withdrawing the land comprised in Survey No.1142, from acquisition.

The main argument advanced by the learned Counsel representing the petitioner against Order dated 4-7-1994 (Annexure C) is malafide exercise of power by the Government. According to the Counsel when acquisition was initiated at the instance of the APMC it was not proper on the part of the Government to withdraw the land from acquisition unless APMC agreed for the same. In the instant case, since no such consent from the APMC is forth coming, action of the Government cannot be sustained. This argument appears to be quite attractive but on closer scrutiny we do not find any substance in it. It is true that acquisition proceedings to acquire the land comprised in Survey No.1142 were initiated at the request of the APMC. Award was passed way back on 27-3-1984, but the APMC had not deposited the amount covered by the Award till date. Even in 1978, when the owners of the land moved the Supreme Court, the Supreme Court directed the Government to reconsider the matter and to give a fresh look into the need for acquiring the land. In the light of the directions given by the Supreme Court, the Government was bound to have a fresh look into the matter, even in absence of any request from the APMC. Viewed in that light, in view of the specific directions given by the Supreme Court, we do not find any illegality or impropriety on the part of the Government in examining the issue as to whether the land comprised in Survey No. 1142 is to be released or not. When the issue is approached in that light, the decision of this Court in Kikabhai Ukabhai Patel & Ors Vs. State of Gujarat & Ors. 31(2) GLR 1043, relied upon by the learned Counsel for the petitioner, cannot be of any assistance to him. In that case this Court was not to deal with a situation where the Supreme Court had specifically directed the Government to give a fresh look in the matter.

Notification under section 4 of the Act was issued way back on 30-7-1977. For about 17 years the Government could not take possession of the property even though award was passed on 27-3-1984. The APMC did not deposit the money covered by the award for getting the land to itself. In such a situation when the Government reconsidered the issue and released the land from acquisition invoking powers under section 48(1) of the Act, no malafide can be spelt out or illegality or arbitrariness found.

In the circumstances detailed above, we do not find any reason to interfere with the order dated 4-7-1994 (Annex. C) issued under Section 48(1) of the

Act releasing the land comprised in S.No.1142 admeasuring 1 Hect.50 Are 85 sq.mts. from acquisition proceedings.

Special Civil Application No.11061 of 1994 is thus found to be devoid of any substance. It is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

Civil Application No.11405 of 1997 accordingly stands allowed.

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sharma